

REMARKS

Claims 21-47 are pending. Claims 21-38 are allowed. Claims 39 - 47 stand rejected. Claim 39 has been amended to recite that the “member is configured to bias” the distal portions of the at least two staple members that are substantially parallel to the central axis when the device is in the first configuration. Support for this amendment may be found in claim 21 which is essentially the device to which the system of claim 39 is directed to.

Claims 39-45 stand rejected under 35 U.S.C. 102 (e) as being anticipated by Tovey (U.S. Patent No. 5,478,354). Applicants respectfully traverse the rejection.

Independent claim 39, as amended, requires, a system for engaging tissue having a preexisting opening comprising a device comprising a ring disposed about a central axis and at least two staple members extending therefrom, the at least two staple members each having a distal end; and a member configured to be disposed within the ring; and wherein the device has a first configuration, where the member is disposed within the ring, and a second configuration, where the member is not disposed within the ring, and wherein the ***member is configured to bias the distal ends of the at least two staple members*** that are substantially parallel to the central axis when the device is in the first configuration, and the distal ends of the at least two staple members are substantially orthogonal to the central axis when the device is in the second configuration.

The Examiner references Tovey relative to the claimed invention. However, Tovey fails to identically disclose the claimed invention in at least that Tovey does not disclose a member that biases the distal end of the at least two staple members. Since claims 40-45 depend from claim 39, the Examiner is respectfully requested to withdraw the rejection of claims 39-45 under 102(e).

Claims 46 and 47 stand rejected under 37 USC § 103(a) as being unpatentable over Tovey. Applicants respectfully traverse the rejection.

Claims 46 and 47 depend from amended claim 39 and require a member *configured to bias the distal ends of the at least two staple members* that are substantially parallel to the central axis when the device is in the first configuration. It is this biasing member that is not disclosed nor suggested in Tovey. Accordingly, Applicants seek withdraw of the rejections of claims 46 and 47 in view of Tovey.

For the foregoing reasons, Applicants submit that claims 39-47 are allowable over the cited art, and request the Examiner to withdraw the rejections.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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